

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: LEWIS, KENDRICK GRIFFITH and  
LEWIS, KELLY GRIFFITH,

Chapter 7  
BKY CASE NO. 04-33023

Debtors.

**NOTICE OF HEARING AND MOTION FOR  
TURNOVER OF PROPERTY OF THE ESTATE**

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TO: THE COURT, UNITED STATES TRUSTEE, THE DEBTORS AND THEIR  
ATTORNEY AND OTHER PARTIES IN INTEREST SPECIFIED IN LOCAL RULE 9013-3:

1. Patti J. Sullivan, Trustee of the bankruptcy estate of the above-named debtors move the court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion at 11:30 A.M. on October 19, 2004, in Courtroom No. 228B, at the United States Court House, 316 N Robert St., St. Paul, Minnesota 55101.
3. Any response to this motion must be filed and delivered not later than 11:30 A.M. on October 14, 2004, which is three days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays), or filed and served by mail not later than October 12, 2004, which is seven days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rules 4002 and 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on May 19, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. §§ 521, 541, 542(a) and 704 and Bankruptcy Rule 9013 and Local Rule 6072-1. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9001-1 to 9006-1 and 9013-1 to 9013-5. The Chapter 7 Trustee requests turnover of property of the estate in order to properly administer the bankruptcy estate.

6. By correspondence dated August 17, 2004, and September 9, 2004, attached hereto and incorporated herewith as Exhibits “A” and “B” the Trustee required turnover of property of the estate and information necessary to complete case administration. Despite the written requests to the debtors’ attorney to surrender property or its value, the debtors have failed to surrender and continue to withhold the following described property of the estate: (1) the debtors’ Wells Fargo checking account with a value of \$18.73 (actual balance); (2) the debtors’ TCF Bank checking account with a value of \$20.52 (actual balance); (3) the debtors’ Greater Iowa Credit Union with a value of \$3.52 (1/3 of actual balance); (4) the debtors’ wedding rings with a value of \$100.00; (5) the debtors’ diamond ring with a value of \$100.00; (6) the debtors’ miter saw with a value of \$120.00; (7) the debtor husband’s nonexempt wages with a value of \$736.82; (8) the debtor wife’s nonexempt wages with a value of \$29.29; and, (9) the debtors’ 2003 Minnesota property refund with a value of \$201.00, or written confirmation that the refund has not been received.

7. The debtors are required to surrender all property of the estate to the Trustee under 11 U.S.C. §521 (3) and (4).

8. In order to ensure that the debtors comply with any order issued by the Court as a result of this motion in a timely manner, the Trustee requests that the order be specifically made applicable to revocation of the discharge under 11 U.S.C. §727 (a)(6)(A) to allow the Trustee to pursue revocation under §727(d)(3) should the debtors not promptly comply with its provisions.

9. This verified motion is based upon all of the files and records herein.

10. Pursuant to Local Rule 9013-2, a separate Memorandum of Facts and Law is submitted with this motion.

11. The Trustee requests the court award her \$500.00 for attorney's fees incurred in bringing on this motion.

WHEREFORE, The undersigned requests an order of the Court:

1. Directing the debtors to turnover to the trustee the following property of the estate:  
(1) the debtors' Wells Fargo checking account with a value of \$18.73 (actual balance); (2) the debtors' TCF Bank checking account with a value of \$20.52 (actual balance); (3) the debtors' Greater Iowa Credit Union with a value of \$3.52 (1/3 of actual balance); (4) the debtors' wedding rings with a value of \$100.00; (5) the debtors' diamond ring with a value of \$100.00; (6) the debtors' miter saw with a value of \$120.00; (7) the debtor husband's nonexempt wages with a value of \$736.82; (8) the debtor wife's nonexempt wages with a value of \$29.29; and, (9) the debtors' 2003 Minnesota property refund with a value of \$201.00, or written confirmation that the refund has not been received within ten (10) days of the entry of an Order granting the Trustee's motion.
2. Directing the debtors to pay the Trustee \$500.00 for attorney's fees incurred in bringing on this motion.
3. Directing that the failure to comply with the Order of the Court requiring a turnover and an accounting as provided for herein be grounds for revocation of discharge under 11 U.S.C. §727(a)(6)(A).

4. For such other relief as the Court deems just and equitable.

Dated this 16<sup>th</sup> day of September 2004.

/e/ Patti J. Sullivan

Patti J. Sullivan

Trustee in Bankruptcy

Attorney ID No. 170124

P.O. Box 16406

St. Paul, MN 55116

(651) 699-4825

#### VERIFICATION

I, Patti J. Sullivan, Chapter 7 Trustee, the moving party, named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on September 16, 2004.

Signed: /e/ Patti J. Sullivan

Patti J. Sullivan, Trustee

**PATTI J. SULLIVAN**  
**UNITED STATES CHAPTER 7 PANEL TRUSTEE**

P.O. Box 16406, St. Paul, MN 55116

Telephone: (651) 699-4825

Facsimile: (651) 699-4831

August 17, 2004

Becky A. Moshier Esq  
2233 University Ave W #420  
St. Paul, MN 55114

Re: Lewis, Kendrick Griffith  
Lewis, Kelly Griffith  
Bankruptcy No. 04-33023  
Date of Filing: 05/19/04

Dear Ms. Moshier:

My review of this file following the meeting of creditors held on 06/21/04 indicates the debtor has the following non-exempt property:

1. Wells Fargo checking account	\$18.73 (actual balance)
2. TCF Bank checking account	\$20.52 (actual balance)
3. Greater IA Credit Union	\$3.52
(1/3 of actual balance)	
4. Wedding rings	\$100.00
5. Diamond rings	\$100.00
6. Miter saw	\$120.00
7. Unearned wages (husband)	\$736.82 <sup>1</sup>
8. Unearned wages (wife)	\$29.29 <sup>2</sup>
9. 2003 MN property refund	\$201.00
10. 2004 Federal tax refund 38%	unknown
11. 2004 State refund 38%	<u>unknown</u>
Total	\$1,329.88

<sup>1</sup> Kendrick Lewis's unearned wages were calculated as follows:

Check dated 5-20-04

$\$2,762.57 - \$210.48 = \$2,552.09$

$\$2,552.09 \times 25\% = \$736.82$

Check dated 6-3-04

$\$2,218.24 - \$242.33 = \$1,975.91$

$\$1,975.91 \div 10 = \$197.59$

$\$197.59 \times 2 = \$395.18$

$\$395.18 \times 25\% = \$98.90$

<sup>2</sup> Kelly Lewis's unearned wages were calculated as follows:

Check dated 5-31-04

$\$422.92 - \$32.35 = \$390.57$

$\$390.57 \div 10 = \$39.06$

$\$39.06 \times 3 = \$117.17$

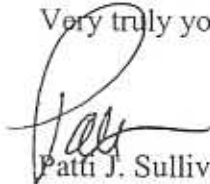
$\$117.17 \times 25\% = \$29.29$

EXHIBIT

Please provide the three (3) Stipulations regarding the 2003 property tax refund.

I will Notice the sale which is subject to the Court's approval. I would appreciate a response to this letter within ten (10) days from the date of this letter. If you have any questions regarding this matter, please feel free to contact me.  
Thank you for your cooperation.

Very truly yours,



Patti J. Sullivan  
Trustee in Bankruptcy

PJS:jk

cc: Lewis, Kendrick Griffith  
Lewis, Kelly Griffith

EXHIBIT

"A"

**PATTI J. SULLIVAN**  
**UNITED STATES CHAPTER 7 PANEL TRUSTEE**

P.O. Box 16406, St. Paul, MN 55116

Telephone: (651) 699-4825

Facsimile: (651) 699-4831

August 17, 2004

Becky A. Moshier Esq  
2233 University Ave W #420  
St. Paul, MN 55114

Re: Lewis, Kendrick Griffith  
Lewis, Kelly Griffith  
Bankruptcy No. 04-33023  
Date of Filing: 05/19/04

**THIS IS A  
FOLLOW-UP  
ACCORDING TO OUR FILES, WE  
HAVE NOT RECEIVED A REPLY  
TO THIS LETTER, YOUR  
EARLY ATTENTION TO THIS  
MATTER WILL BE APPRECIATED**

9/9/04  
LC

Dear Ms. Moshier:

My review of this file following the meeting of creditors held on 06/21/04 indicates the debtor has the following non-exempt property:

1. Wells Fargo checking account	\$18.73 (actual balance)
2. TCF Bank checking account	\$20.52 (actual balance)
3. Greater IA Credit Union (1/3 of actual balance)	\$3.52
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**EXHIBIT**

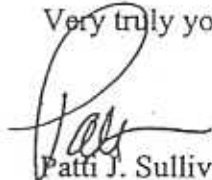
B<sup>n</sup>

Becky A. Moshier Esq  
August 17, 2004  
Page 2

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I will Notice the sale which is subject to the Court's approval. I would appreciate a response to this letter within ten (10) days from the date of this letter. If you have any questions regarding this matter, please feel free to contact me.  
Thank you for your cooperation.

Very truly yours,



Patti J. Sullivan  
Trustee in Bankruptcy

PJS:jk

cc: Lewis, Kendrick Griffith  
Lewis, Kelly Griffith

EXHIBIT

"B"



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: LEWIS, KENDRICK GRIFFITH and  
LEWIS, KELLY GRIFFITH,

Chapter 7  
BKY CASE NO. 04-33023

Debtors.

**TRUSTEE'S MEMORANDUM OF FACTS AND LAW**  
**IN SUPPORT OF MOTION FOR TURNOVER OF PROPERTY**

---

Patti J. Sullivan, Chapter 7 Trustee, submits the following Memorandum of Facts and Law in Support of Motion for Turnover in the above-captioned, and as grounds therefore would respectfully show the Court:

FACTS

1. This Chapter 7 case was filed on May 19, 2004, and is pending before this Court.
2. Patti J. Sullivan, was appointed as Chapter 7 Trustee on May 20, 2004.
3. The Trustee made demand upon the debtors for turnover of property of the estate needed to administer the bankruptcy case on August 17, 2004, and September 9, 2004, as shown in Exhibits "A" and "B" (attached) to the instant motion, and incorporated therein.

DISCUSSION

1. Turnover of Information.

Bankruptcy debtors receive a substantial benefit when relieved of personal liability for repayment of unsecured obligations through discharge. In achieving a balance between the rights of debtors and their creditors, Congress has determined that debtors have an affirmative duty to turn over information necessary to a complete administration of the bankruptcy case.

Sections 521(3) and (4) of the Bankruptcy Code provide in pertinent part,

[t]he debtor shall . . .

(3) if a Trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(4) if a Trustee is serving in the case, surrender to the Trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under Section 344 of this title; . . . .

The law interpreting the above sections of the Code is well settled concerning a debtor's affirmative obligation to cooperate with the Trustee and to supply necessary information for case administration. See: In re: Lange, 110 B.R. 907, 909 (Bankr. D. Minn 1990); In re: Bently, 120 B.R. 712, 715 (Bankr. S.D.N.Y. 1990); and In re: Ridley, 115 B.R. 731, 736 (Bankr. D. Mass. 1990).

Due to the debtors' failure to supply property of the estate, administration of this bankruptcy case has been unduly delayed. The Trustee is entitled to an Order requiring that the debtors provide the following property of the estate: (1) the debtors' Wells Fargo checking account with a value of \$18.73 (actual balance); (2) the debtors' TCF Bank checking account with a value of \$20.52 (actual balance); (3) the debtors' Greater Iowa Credit Union with a value of \$3.52 (1/3 of actual balance); (4) the debtors' wedding rings with a value of \$100.00; (5) the debtors' diamond ring with a value of \$100.00; (6) the debtors' miter saw with a value of \$120.00; (7) the debtor husband's nonexempt wages with a value of \$736.82; (8) the debtor wife's nonexempt wages with a value of \$29.29; and, (9) the debtors' 2003 Minnesota property refund with a value of \$201.00, or written confirmation that the refund has not been received.

Forfeiture of Discharge.

Under 11 U.S.C. §727 (a)(6)(A), the Code provides that if debtors refuse to comply with court orders, discharge of debts may be withheld. In this case, the trustee requests that if the trustee's motion is granted, the terms of the Order be applicable under 11 U.S.C. §727 (a)(6)(A) so that the debtors will have an additional incentive to perform in a timely manner.

Based upon the foregoing, the Chapter 7 Trustee is entitled to an Order requiring that the debtors turnover non-exempt funds requested in Exhibit "A" and "B" attached to the Motion so that she may conclude administration of the bankruptcy estate along with an award of attorney fees in the amount of \$500.00 for having to bring on this motion. To expedite resolution of this matter, the Trustee requests that the Order be designated a lawful Order pursuant to 11 U.S.C. §727 (a)(6)(A).

Dated this 16<sup>th</sup> day of September 2004.

/e/ Patti J. Sullivan

Patti J. Sullivan  
Trustee in Bankruptcy  
Attorney ID No. 170124  
P.O. Box 16406  
St. Paul, MN 55116  
(651) 699-4825

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In the Matter of:

LEWIS, KENDRICK GRIFFITH and  
LEWIS, KELLY GRIFFITH,

Debtors.

Chapter 7  
BKY CASE NO. 04-33023

UNSWORN CERTIFICATE OF SERVICE

I, Joeline Kissinger, declare under penalty of perjury that on the 16<sup>th</sup> day of September 2004, I mailed a copy of the attached Notice of Hearing and Motion for Turnover of Property of the Estate, Trustee's Memorandum of Facts and Law in Support of Motion for Turnover of Property of the Estate, and Proposed Order by first class mail postage prepaid to each entity named below or on the statement attached at the address stated below or in said attachment for each entity:

Becky A. Moshier Esq  
2233 University Ave W #420  
St. Paul, MN 55114

United States Trustee  
1015 United States Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Kendrick Griffith Lewis  
798 Pascal Street N.  
Saint Paul, MN 55104-1323

Kelly Griffith Lewis  
798 Pascal Street N.  
Saint Paul, MN 55104-1323

Executed on this 16<sup>th</sup> day of September 2004.

  
Joeline Kissinger

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: LEWIS, KENDRICK GRIFFITH and  
LEWIS, KELLY GRIFFITH,

Chapter 7  
BKY CASE NO. 04-33023

Debtors.

**ORDER**

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The above captioned matter came before the Court on October 19, 2004, on motion by the Chapter 7 Trustee Patti J. Sullivan in this case, seeking an order requiring the debtors to turnover property of the estate.

Patti J. Sullivan appeared for the trustee. Other appearances are noted in the record.

The Court made its findings of fact and conclusions of law on the record pursuant to Rule 52 of the Federal Rules of Civil Procedure and Bankruptcy Rule 7052.

Based upon the files and records, and arguments of counsel,

IT IS HEREBY ORDERED:

1. That the debtors shall turn over to the Trustee the following property of the estate: (1) the debtors' Wells Fargo checking account with a value of \$18.73 (actual balance); (2) the debtors' TCF Bank checking account with a value of \$20.52 (actual balance); (3) the debtors' Greater Iowa Credit Union with a value of \$3.52 (1/3 of actual balance); (4) the debtors' wedding rings with a value of \$100.00; (5) the debtors' diamond rings with a value of \$100.00; (6) the debtors' miter saw with a value of \$120.00; (7) the debtor husband's nonexempt wages with a value of \$736.82; (8) the debtor wife's nonexempt wages with a value of \$29.29; (9) the debtors' 2003 Minnesota property refund with a value of \$201.00, or written confirmation that the refund has not been received; and (10) attorney's fees in the amount of \$500.00 within ten (10) days of the entry of this Order.
2. That this Order shall constitute a lawful Order within the meaning of 11 U.S.C. §727 (a)(6)(A) for purposes of discharge revocation should the debtors fail to comply with its terms in a timely manner.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2004.

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Gregory F. Kishel  
Chief Judge Of U.S. Bankruptcy Court